

*Privy Council Appeal No. 181 of 1919.*

*In the matter of part cargo ex Steamship "Urna."*

The J. K. Armsby Company - - - - - *Appellants*

*v.*

His Majesty's Procurator-General - - - - - *Respondent.*

FROM

THE HIGH COURT OF JUSTICE (ENGLAND) PROBATE, DIVORCE AND  
ADMIRALTY DIVISION (IN PRIZE).

---

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 14TH MAY, 1920.

---

*Present at the Hearing:*

LORD SUMNER.

LORD PARMOOR.

LORD WRENBURY.

THE LORD JUSTICE-CLERK.

SIR ARTHUR CHANNELL.

*[Delivered by LORD PARMOOR.]*

---

The appellants are a corporation of the State of Illinois, doing business in the States of California, Illinois, New York, and in other places in the United States, as packers, shippers and dealers in dried fruits and other food stuffs. Alf Hansen is a Danish subject carrying on business as a merchant at Copenhagen, who has acted as selling agent for the claimants at Copenhagen for some years. On the 14th April, 1919, the President of the Prize Court made an order condemning 9,077 boxes of California prunes as good and lawful prize as contraband of war. These boxes were shipped by the appellants on board the "Urna" on the 26th November, 1915, for carriage to Copenhagen, and were consigned for sale to Alf Hansen. On the 24th December, 1915, the boxes were seized as prize, and required to be discharged at the port of Bristol. At the hearing before their Lordships two questions were raised:—

- (1) Whether the goods, which were conditional contraband, were destined for Germany?
- (2) Whether they were protected by the Order in Council of the 29th October, 1914?

A statistical table was put in evidence, which proved that in 1915 the imports into Denmark of dried fruits were 18,651 tons, whereas the annual average of imports before the war (1911-1913) were 6,300 tons. The President has found that the statistical evidence establishes a case which throws upon the appellants the onus of showing that the goods were not going to Germany. Their Lordships concur in this opinion. There is ample statistical evidence to place an obligation on the appellants to show that the destination of the goods is innocent. The President further finds that it is impossible for him to say that the appellants have discharged the onus thrown upon them, and their Lordships concur in this finding.

The goods are said to have been consigned in pursuance of a verbal agreement made between Alf Hansen, the agent of the appellants in Copenhagen, and A. W. Porter, a Vice-President of the appellants, at that time in Copenhagen. Under this Alf Hansen undertakes to sell goods for the Armsby Company, advancing 70 per cent. of the value. There is no evidence that any consignment other than the boxes of California prunes was sold on these terms, and Hansen received notice of shipment for the first time on the 29th November, 1915. So far as has been ascertained, no goods belonging to the claimants have been previously condemned except in the case of what is called the "Hammerstrom Group." In this case it is said that the appellants did not put in an affidavit through inadvertance, but it is not denied that the appellants were from time to time in fact sending goods to Germany. The President in his judgment deals at length with a letter written in July, 1915, from the firm of J. and T. Lauezzari, and with the explanation made in the affidavit of Mr. Lester on behalf of the appellants. In this it is stated that J. and T. Lauezzari were simply a centre from which a quotation from the appellants was radiated through Continental Europe. J. and T. Lauezzari, however, carried on business at the same address as Jantzen and Deeke, who carried through a transaction with Broderna Hammerstrom for the appellants, with the intention of sending on contraband goods to an enemy destination. The explanation given by Mr. Lester is set out in the judgment of the President. Their Lordships concur with the conclusion of the President that the explanation put forward by the appellants is not satisfactory, and it is not necessary to restate all the facts in detail.

In addition to this instance there are a series of intercepted messages and letters from the appellants of a character not free from suspicion. On the 23rd November, 1914, a wireless message was sent to Christian Eckardt, of Hamburg, indicating that the appellants were dealing or prepared to deal with him. Of this intercepted message no explanation is given. A more important message of the 17th March, 1915, was sent to the Bulsing Company of Rotterdam, asking them to notify Behn and Son, of Hamburg that the appellants had consigned apricots to them at Rotterdam. Again no explanation is forthcoming. On the

4th November, 1915, a wireless message was sent to ship peaches to Rabe Neuschafer, of Hamburg, under cover of the name of Rudolf Kolmodin, of Stockholm. In addition to direct dealings with Germany, there were consignments from the appellants to Nils Soeron, of Gothenburg, and Ekstrom and Leffler of the same city, both of whom had been engaged in assisting German trade during the war, as stated in the affidavit of Mr. Greenwood. There were also consignments to Clarholm and Bergman, of Gothenburg, who are merchants dealing in dried fruits and other colonial products. There is, however, no evidence that Clarholm and Bergman have been engaged in forwarding goods to Germany. All these transactions tend to confirm the judgment of the learned President that the goods in question were conditional contraband destined for Germany, and that they are subject to condemnation unless it can be established that they are protected by Order in Council of the 29th October, 1914.

In the opinion of their Lordships it would be impossible to say that an ordinary agent for sale is a "consignee of the goods" within the Order in Council of the 29th October, 1914. Such an agent would not have the real control of the destination of the goods. It would be within the power of his principal to give instructions from time to time. The meaning of the words in the Order was decided in the *Louisiana* [1918] A.C. 461: "The consignee of the goods in the Order in Council of the 29th October, 1914, means some person other than the consignor to whom the consignor parts with the real control of the goods."

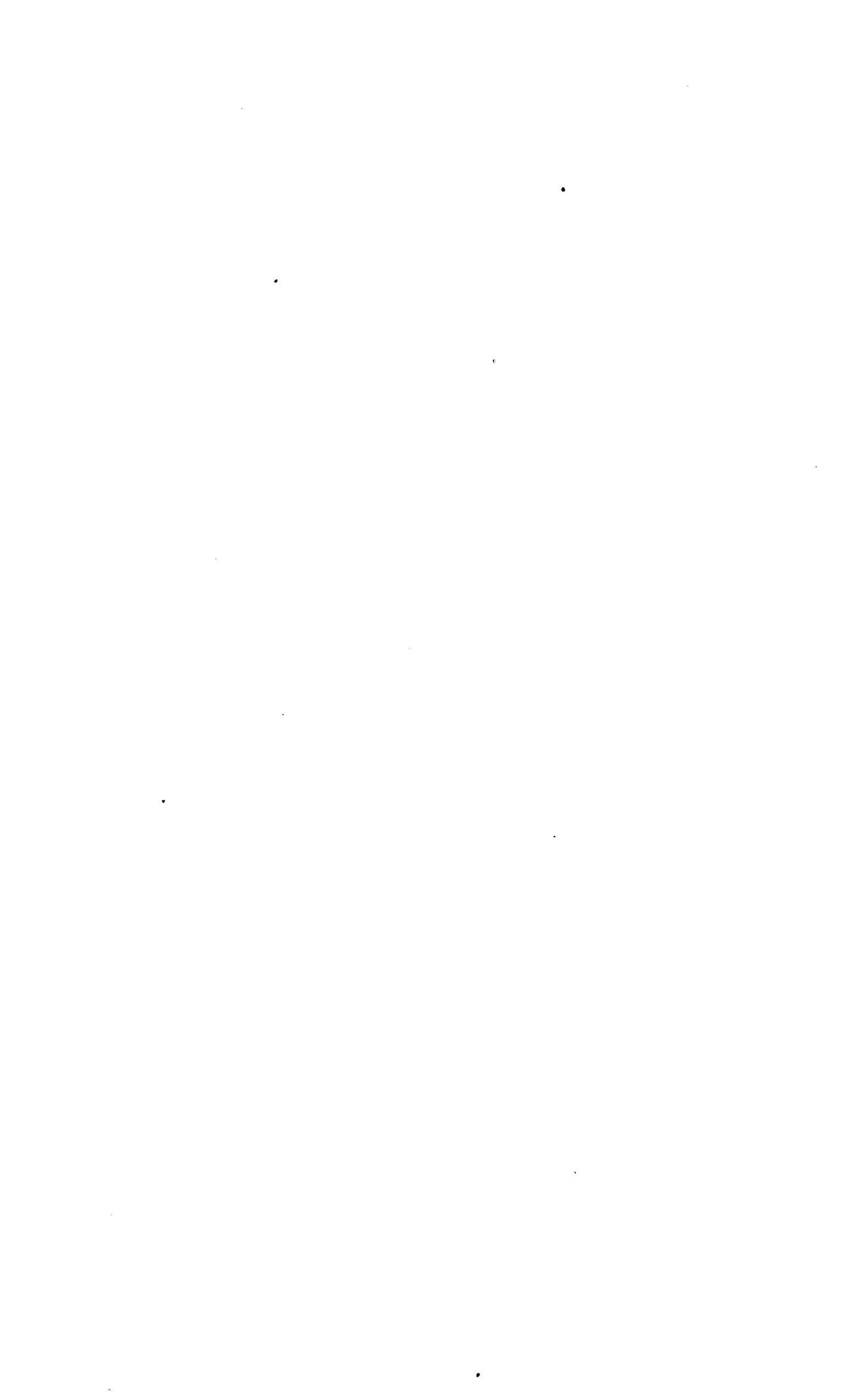
In the present instance Alf Hansen was in the position of an agent for sale who had advanced 70 per cent. of the value of the goods consigned to him. Whatever rights of lien or otherwise, Alf Hansen might have, so long as the advance made by him in respect of the goods was outpaid and outstanding, there is no evidence that there was any special arrangement that he would not be subject to the direction of the appellants in making sales, or that the appellants might not from time to time determine their ultimate destination. In respect of his advance, and apart from special conditions, the agent would not be in a better position to control the destination of goods, owing to his advance of 70 per cent. of their value, than the pledgee of the whole cargo of a ship seized as prize; and their Lordships have determined in the *Odessa* [1916] 1, A.C. 145, that legal ownership is the sole criterion. In this case admittedly the legal ownership remains in the appellants. It is only as such owners that they are entitled to make their claim. The following passage occurs in the judgment of Lord Mersey:—

"If special rights of property created by the enemy owner were recognised in a Court of Prize, it would be easy for such owner to protect his own interests upon shipment of the goods to or from the ports of his own country. He might for example in every case borrow on the security of the goods an amount approximating to their value from a neutral lender, and create in favour of such lender a charge or lien or mortgage on the goods in question."

In the opinion of their Lordships the advance of 70 per cent. by Alf Hansen does not, in the absence of any other special conditions, alter the character of the ownership of the goods in question, or constitute the agent for sale, a consignee within the meaning of the Order in Council of the 29th October, 1914. At the same time their Lordships desire to say that they find no evidence to suggest that Alf Hansen did not act throughout in an honourable and straightforward manner.

Their Lordships will humbly advise His Majesty that this appeal should be dismissed with costs.

---



In the Privy Council.

---

*In the matter of part cargo ex Steamship "Urnu."*

THE J. K. ARMSBY COMPANY

v.

HIS MAJESTY'S PROCURATOR GENERAL.

---

---

DELIVERED BY LORD PARMOOR.

Printed by Harrison & Sons, St. Martin's Lane, W.C.

1920.